

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 6002 of the Omnibus)	
Budget Reconciliation Act of 1993)	WT Docket No. 09-66
)	
Annual Report and Analysis of Competitive Market)	
Conditions With Respect to Mobile Wireless)	
Including Commercial Mobile Services)	
_____)	

COMMENTS OF SPRINT NEXTEL CORPORATION

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September 30, 2009

Summary of Comments

The wireless retail market remains competitive and has brought unimagined innovation and value to American consumers over the past decade. Wireless networks and devices can do more, at lower costs, than anyone imagined in 1993, when Congress authorized the auction of spectrum that would create new entrants to challenge the then sanctioned cellular duopoly. Sprint Nextel Corporation is proud to have been a leader in driving this competition and innovation, introducing the first nationwide CDMA network, being the first to deploy a 2G data network, deploying the most reliable 3G network, and now being the first carrier in the United States to offer 4G broadband mobile service with download speeds of up to 10 Mbps. Through innovation and customer focused service, wireless carriers have succeeded in surpassing the wireline world in just over 15 years.

Unfortunately, regulation has not kept pace with the choices of consumers. The vast majority of current FCC regulations are designed to transfer money from the consumers of wireless service to unduly enrich incumbent local exchange carriers. Through USF payments, switched access payments, and special access payments, wireless carriers are being forced to directly underwrite their competitors. If the FCC wishes to see the type of competition and innovation of the last ten years continue for the next ten, it must address this wealth transfer before the industry returns to a new duopoly.

Sprint addresses the following six points in these comments:

1. The retail mobile services market is effectively competitive, and consumers continue to benefit enormously by this competition. Among other things:

- The effective price for wireless services in 2008 fell by an average of 17 percent – from six to five cents per minute.
- While the Consumer Price Index (CPI) last year for all goods and services increased by 3.1 percent, the CPI for wireless services fell by 5.4 percent.
- American consumers use wireless services far more than people elsewhere – by a factor of eight compared to Germans and by a factor of six compared to the Japanese.
- On a per minute basis, Americans pay the lowest prices in the world – paying 80 percent less than the Japanese and 67 percent less than the French.
- Americans have available to them a virtually unlimited choice of plans so each consumer can select a plan that best meets his or her unique needs.
- Competition has led Sprint to introduce numerous innovations to the benefit of American consumers and businesses.

2. Sprint's new 4G mobile broadband services are beginning to revolutionize the way Americans work and play. Sprint introduced its new 4G service one year ago in Baltimore and the service will be available to 30 million Americans by the end of this year. Average download speeds are three-to-five times faster than average 3G speeds, and consumers in these markets can today receive unlimited 4G usage for less than \$70 monthly.

3. The downstream (or “edge”) market for applications, content and commerce is vibrant and growing rapidly. Sprint has followed an open Internet approach since it launched its first mobile web product eight years ago, as evidenced by the fact it will be hosting next month its Ninth Annual Application Developers Conference. Sprint has introduced devices that run on many different operating systems, and supports new applications introduced with third-party developers.

4. The next competition report should analyze two upstream (or “input”) markets that have negatively impacted investment, the availability of new services and competition:

A. *Special Access.* Incumbent LECs generally, and the three RBOCs in particular, continue to exercise monopoly control over an essential facility – namely, the “backhaul” facilities wireless carriers need to connect their cell sites with their network equipment. While this pricing strategy benefits ILEC shareholders, it harms wireless consumers and insulates the ILEC’s landline network from robust competition.

B. *Siting.* Unreasonable delays in some local government siting decisions are harming consumers by preventing wireless carriers from introducing mobile broadband services sooner.

5. The Commission must reform intercarrier compensation and universal service to spur the development of IP-based networks. The most significant current barrier to mobile broadband deployment, at least among barriers over which the FCC has direct control, is the current regimes for intercarrier compensation and universal service. Today’s regimes are designed to support circuit-switched networks that are obsolete and which will soon be replaced by IP broadband networks. These programs have perverse effects on broadband deployment and undermine the very policies Congress has directed the FCC to implement relative to broadband networks. Sprint urges the FCC to seek comment on the appropriate intercarrier compensation and universal service regimes that are appropriate for IP broadband networks.

6. The Commission should reaffirm that it will not intervene in the operation of free market forces without a demonstration of a clear market failure. Congress made clear in the 1993 Budget Act, a policy that the Commission has largely implemented, that the wireless sector should evolve via market forces rather than through government intervention. This hands-off, de-regulatory approach has been enormously successful to the benefit of consumers, investment and innovation. So as to provide the certainty industry needs to make further billion dollar investments in 4G networks, the FCC should reaffirm that it will intervene with new regulation only upon a demonstration of “a clear cut need.”

Table of Contents

I. THE RETAIL MOBILE SERVICES MARKET IS COMPETITIVE AND CONSUMERS CONTINUE TO BENEFIT ENORMOUSLY FROM THIS COMPETITION	2
A. WIRELESS PRICES CONTINUE TO FALL AND AMERICAN CONSUMERS PAY LESS THAN CONSUMERS IN OTHER COUNTRIES	3
B. AMERICAN CONSUMERS CAN CHOOSE AMONG A VIRTUALLY UNLIMITED ARRAY OF PLANS	5
C. COMPETITION HAS LED SPRINT TO NUMEROUS NEW INNOVATIONS TO THE BENEFIT OF CONSUMERS AND BUSINESSES	7
II. SPRINT’S NEW 4G MOBILE BROADBAND SERVICES ARE BEGINNING TO REVOLUTIONIZE THE WAY AMERICANS WORK AND PLAY	8
III. THE DOWNSTREAM (“EDGE”) MARKET FOR APPLICATIONS, CONTENT AND COMMERCE IS VIBRANT AND GROWING RAPIDLY	9
IV. THE NEXT REPORT SHOULD ANALYZE TWO UPSTREAM (OR INPUT) MARKETS THAT HAVE NEGATIVELY IMPACTED INVESTMENT, THE AVAILABILITY OF NEW SERVICES, AND COMPETITION	11
A. THE NEXT REPORT SHOULD ANALYZE THE IMPACT INCUMBENT SPECIAL ACCESS PRICES ARE HAVING ON THE AVAILABILITY AND COST OF WIRELESS SERVICES	12
B. THE NEXT REPORT SHOULD ANALYZE THE IMPACT LOCAL GOVERNMENT SITING PRACTICES ARE HAVING ON THE AVAILABILITY OF WIRELESS SERVICES	15
V. THE COMMISSION MUST REFORM INTERCARRIER COMPENSATION AND UNIVERSAL SERVICE TO SPUR THE DEPLOYMENT OF IP-BASED BROADBAND NETWORKS	17
VI. THE COMMISSION SHOULD REAFFIRM THAT IT WILL NOT INTERVENE IN THE OPERATION OF FREE MARKET FORCES WITHOUT A DEMONSTRATION OF A CLEAR MARKET FAILURE.....	20
VII.CONCLUSION	22

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COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”) submits these comments in response to the Notice of Inquiry that the Commission has commenced so it can develop a record for its preparation of the next mobile wireless services competition report to Congress.¹

Congress has charged the Commission with reviewing annually “competitive market conditions with respect to commercial mobile services” and to include in its report “an analysis of those conditions.”² The central question the Commission is to address is “whether or not there is effective competition.”³

While Sprint demonstrates below that the retail market for wireless services (the market of interest to consumers) is effectively competitive today, the Commission should closely analyze upstream (or input) markets that negatively impact the ability of independent wireless carri-

¹ See *Implementation of Section 6002 of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 09-66, *Notice of Inquiry*, FCC 09-67 (Aug. 27, 2009) (“*Mobile Wireless Competition NOI*”).

² 47 U.S.C. § 332(1)(C).

³ *Ibid.*

ers to compete on a level playing field. The Commission must also reexamine archaic policies – USF and intercarrier compensation, most notably – that transfer wealth from independent wireless carriers to ILECs and vertically integrated competitors. In short, the competitive wireless market we see today may look good on the surface, but there are cracks in the foundation that threaten the state of competition.

I. THE RETAIL MOBILE SERVICES MARKET IS COMPETITIVE AND CONSUMERS CONTINUE TO BENEFIT ENORMOUSLY FROM THIS COMPETITION

The Wireless Bureau Chief found earlier this year in the last competition report that “U.S. consumers continue to reap significant benefits – including low prices, new technologies, improved service quality, and choice among providers – from competition in the CMRS marketplace”:

U.S. consumers continue to benefit from effective competition in the CMRS marketplace. . . . Consumers continue to increase their use of mobile telephones for both voice and data services. . . . Relatively low prices on mobile voice and data services appear to have been a key factor stimulating subscriber growth and usage. . . . [M]obile telephone service in the United States remains relatively inexpensive on a per minute basis compared with that in Western Europe and Japan.⁴

However, a group of consumer advocates recently told the Commission that the Bureau got it wrong because, in their view, the wireless market is “demonstrably uncompetitive” and is “grow[ing] less and less competitive.”⁵ According to this group, “[p]rices are rising, consumer

⁴ *Thirteenth Competition Report*, 24 FCC Rcd 6185, 6189 ¶ 1, 6310-11 ¶ 274 (2009).

⁵ Consumer Federation of America *et al.* Comments, WT Docket No. 09-66, at ii and 2 (June 15, 2009) (“CFA Comments”). *See also id.* at 4 (“the Market is Not Competitive”); *id.* at 7 (same); *id.* at 13 (same); *id.* at 19 (same).

choice is artificially limited, and valuable innovations are being delayed or kept from the market altogether.”⁶

These assertions are incompatible with the facts. The evidence below demonstrates that not only have American consumers continued to realize additional price reductions (which, in turn, has further increased their demand for service), but they have also enjoyed new applications that were unimaginable only a few years ago. Thus, the retail market for mobile services remains effectively competitive and consumers continue to reap sizable benefits from this competition.

A. WIRELESS PRICES CONTINUE TO FALL AND AMERICAN CONSUMERS PAY LESS THAN CONSUMERS IN OTHER COUNTRIES

When Sprint PCS entered the market in 1996, there were 44 million wireless customers, the average monthly bill was \$47.70, and the effective price of wireless service (average revenue per minute) was 38 cents/minute.⁷ Eleven years later, in 2007, there were 263 million customers, the average monthly bill was \$49.79, and the effective price of service was six cents/minute.⁸ In other words, in the span of 11 years, the effective price of mobile service fell by over 82 percent while the number of subscribers increased nearly 500 percent and while the average usage per customer increased by over 500 percent.⁹

The facts in the record demonstrate that the effective price per minute for wireless service has continued to fall since 2007 – decreasing last year alone by 17 percent:

⁶ Consumer Federation of America *et al.* Reply Comments, WT Docket No. 09-66, at 1 (July 13, 2009) (“CFA Reply Comments”).

⁷ *See Second CMRS Competition Report*, 12 FCC Rcd 11266, 11275, 11280, 11332 (1997); *Thirteenth CMRS Competition Report*, 24 FCC Rcd 6185, 6227 ¶ 193, Table 12 (2009).

⁸ *Thirteenth CMRS Competition Report*, 24 FCC Rcd at 6227 ¶ 193, Table 12 and 6279 ¶ 197.

⁹ *See id.*

Average Revenue Per Minute¹⁰

<u>Year</u>	<u>Average RPM</u>	<u>Percent Decrease from Prior Year</u>
2003	\$0.10	--
2004	\$0.09	10%
2005	\$0.07	22%
2006	\$0.07	0%
2007	\$0.06	14%
2008	\$0.05	17%

This continued decrease in price for wireless service is further reflected by the Bureau of Labor Statistics' Consumer Price Index ("CPI"). In 2008, the CPI for all goods and services increased by 3.1 percent¹¹ – while the CPI for wireless services *decreased by 5.4 percent*.¹²

Given these facts, there is no basis at all to the assertions that the prices Americans are paying for wireless services are "excessive" and "rising" or that price competition "has diminished."¹³

The same group of consumer advocates further suggests that "insufficient competition" exists in the wireless market because "U.S. consumers pay more in total for wireless service than most other developed nations."¹⁴ But there is a reason for this – namely, American consumers

¹⁰ See CTIA Written Ex Parte, WT Docket No. 09-66 (Aug. 14, 2009); *Thirteenth CMRS Competition Report*, 24 FCC Rcd 6185, 6192 ¶ 2, 6275 ¶ 192 (2009); *Twelfth CMRS Competition Report*, 23 FCC Rcd 2241 ¶ 199 (2008); *Eleventh CMRS Competition Report*, 21 FCC Rcd 10947, Table 10 (2006).

¹¹ See <http://data.bls.gov/cgi-bin/surveymost>.

¹² See http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?series_id=PCU517212517212.

¹³ See CFA Reply Comments at 1 and 18.

¹⁴ CFA Reply Comments at 19.

use wireless services far more than people elsewhere – by a factor of eight compared to Germans and by a factor of six compared to the Japanese:

Average Monthly Usage - Minutes of Use (1Q09)¹⁵

	<u>France</u>	<u>Germany</u>	<u>Japan</u>	<u>United States</u>
Average MOUs	251	102	134	830

What is important to consumers is not the total amount they pay for a service, but the value they receive from the service. The evidence shows that the average price of a mobile call is a real bargain for American consumers when compared to what consumers in other countries pay for their service:

Average Revenue Per Minute Revenue (1Q09)¹⁶

	<u>France</u>	<u>Germany</u>	<u>Japan</u>	<u>United States</u>
Average RPM	\$0.15	\$0.12	\$0.25	\$0.05

Some might believe that Americans talk too much on their wireless phone or send too many text messages. But no one can credibly claim that Americans are paying too much for wireless services, given the vast amount of services they buy relative to persons elsewhere.

B. AMERICAN CONSUMERS CAN CHOOSE AMONG A VIRTUALLY UNLIMITED ARRAY OF PLANS

The same group of consumer advocates asserts that the plans carriers make available to the American public offer “limited flexibility and consumer choice” and do “not reflect the vari-

¹⁵ See CTIA Written Ex Parte, WT Docket No. 09-66 (Aug. 14, 2009).

¹⁶ See CTIA Written Ex Parte, WT Docket No. 09-66 (Aug. 14, 2009).

able lifestyles of the American consumer.”¹⁷ This consumer group, however, submits no facts to support its assertions.

American consumers have a virtually unlimited number of choices of wireless plans.

Sprint alone provides a wide variety of plans so each consumer can choose a plan that best meets his or her particular needs. For example, if a person:

- Prefers a postpaid plan with a subsidized handset, there are several plans between Sprint’s “Basic” plan for \$29.99 monthly (200 workday minutes; unlimited nights and weekends) to its “Simply Everything” plan for \$99.99 monthly, which includes unlimited voice minutes, unlimited text messages, unlimited pictures and video, and web surfing.
- Prefers a pay as you go plan without any contract, he/she has several options, including:
 - ✓ Sprint’s “Pay as You Go” plan - pay 10 cents/minute for voice and 10 cents per text message, or
 - ✓ If the person expects to use the phone more on particular days, use the “Daily Chat & Text” plan for \$1.00 a day with unlimited text messages and unlimited nights, weekends and mobile-to-mobile minutes, or
 - ✓ Subscribe to the “Monthly Unlimited Plan” for \$50 monthly, which includes unlimited voice minutes, unlimited text messages, unlimited pictures and video and web surfing.
- Is more of a texter and less a talker, he/she has options, including
 - ✓ Sprint’s “Everything Messaging” plan with unlimited text, picture mail and video with 450 voice minutes for \$49.99 monthly.
 - ✓ “Everything Messaging” with 900 voice minutes for \$69.99 monthly.
- Prefers to web surf only with no desire for voice communication, he/she may obtain a Mobile Broadband Connection Plan for \$59.99 monthly.

The success of the diversity of plans is confirmed by the fact that over the past seven years, both the number of wireless customers and their average monthly usage has more than doubled.

Some consumers might complain they have too many choices to select from. But under no circumstances can one credibly claim that the choices available to American consumers are

¹⁷ Consumer Federation of America *et al.* Comments, WT Docket No. 09-66, at 8 (June 15, 2009) (“CFA Comments”).

“limited” or that the plans offered do “not reflect the variable lifestyles of the American consumer.”

C. COMPETITION HAS LED SPRINT TO NUMEROUS NEW INNOVATIONS TO THE BENEFIT OF CONSUMERS AND BUSINESSES

Also without merit is the assertion by a group of consumer advocates that innovation in the provision of wireless services is “limited.”¹⁸ Look at the new services, plans and features that Sprint alone has introduced just since the beginning of last year:

- Earlier this month, Sprint introduced an “Any Mobile, AnytimeSM” plan that enables customers to get unlimited mobile-to-mobile calls from the Sprint network to any other domestic wireless phone at any time.¹⁹
- Last July Sprint with Samsung introduced AIRAVETM which improves in-home coverage plus the option of unlimited calling with an AIRAVE voice plan.²⁰ PC World named AIRAVE as one of the 25 Most Innovative Products of the Year.²¹
- Sprint has partnered with M2M DataSmart to bring embedded devices to market. This partnership will multiply the selection of embedded wireless devices operating on Sprint’s 3G network and make it easier and quicker for an entrepreneurial startup to take an idea from concept to completion and enter the lucrative machine-to-machine (“M2M”) arena using Sprint mobile broadband. M2M applications are particularly well-suited in the fields of healthcare, fleet management, and energy (*e.g.*, Smart Grid initiatives).²²
- Sprint became the first carrier to launch an “eco-friendly” wireless device – the Samsung Reclaim. The handset is made from 80 percent recyclable materials with its bio-plastic material (made from corn) is 100 percent biodegradable and it’s free of polyvinyl chloride (PVC) and phthalates and nearly free of brominated flamer retardants (BFR). In addition, the outer packaging and the phone tray inside the box are made from 70 percent recycled materials and the images are printed using soy-based ink. The charger is Energy Star approved

¹⁸ See CFA Comments at 2 and 23; CFA Reply comments at 1 and 11.

¹⁹ See Sprint Press Release, *Sprint Customers Can Break Free of Calling Circles with Any Mobile, Anytime* (Sept. 10, 2009).

²⁰ See Sprint Press Release, *Sprint Customers Nationwide Can Soon Get Enhanced Coverage, Unlimited Calling in Homes, Office with the Award-Winning Sprint AIRAVE by Samsung* (July 30, 2008).

²¹ See PC World, *The 25 Most Innovative Produces of the Year* (Dec. 27, 2007).

²² See Sprint Press Release, *Sprint and M2M DataSmart Make it Easier to Bring an Embedded Device to Market*, (September 1, 2009).

and consumes 12 times less power than the Energy Star standard for standby power consumption and it includes a visible notification to alert the user to unplug the handset once it's fully charged.²³ The Samsung Reclaim is just one example of the many initiatives that helped Sprint earn a top 15 ranking by Newsweek magazine in its environmental ranking of America's 500 largest corporations.²⁴

II. SPRINT'S NEW 4G MOBILE BROADBAND SERVICES ARE BEGINNING TO REVOLUTIONIZE THE WAY AMERICANS WORK AND PLAY

One year ago in Baltimore, Sprint became the first major carrier in the United States to begin providing mobile broadband services using fourth-generation ("4G") wireless technology.²⁵ This mobile broadband service offers peak downlink speeds of more than 10 Mbps and average download speeds in the range of three-to six Mbps – which is three-to-five times faster than average 3G speeds. With Sprint's "Mobile Broadband Connection Plan – 3G/4G, customers, for only \$69.00 monthly, receive *unlimited* 4G usage, *plus* five GB of 3G usage when they travel to areas where only Sprint's 3G network is available.

In addition to Baltimore, Sprint today provides its WiMAX mobile broadband services in Atlanta, Las Vegas and Portland. By the end of this year, Sprint expects to be providing these services in markets covering 30 million people, including in Chicago, Dallas/Forth Worth, Philadelphia and Seattle. By the end of next year, Sprint anticipates expanding coverage to such areas as Boston, Houston, New York, San Francisco, and Washington, D.C.

²³ See Sprint Press Release, *Sprint Expands Environmental Leadership with New Initiatives and Debut of Eco-Friendly Samsung Reclaim*, (August 6, 2009).

²⁴ See, <http://greenrankings.newsweek.com/companies/top500/sprint>

²⁵ Sprint uses the WiMAX network that Clearwire operates and is constructing. Sprint invested \$7.4 billion in Clearwire and owns 51 percent of the company. Other investors include Google, Intel and several cable companies such as Comcast and Time Warner Cable.

III. THE DOWNSTREAM (“EDGE”) MARKET FOR APPLICATIONS, CONTENT AND COMMERCE IS VIBRANT AND GROWING RAPIDLY

A group of consumer advocates asserts that wireless carriers have imposed “substantial” and “artificial” limits on “the development of applications for wireless devices and wireless Internet access services.”²⁶ This claim, however, is based entirely on the alleged practices of one carrier.²⁷

This group misses the point because in competitive markets, consumers can, and frequently do, change service providers. The issue is not whether all carriers have the same practices; in competitive markets, one would expect each carrier to adopt different practices so as to differentiate itself from its competitors. The issue for the Commission is whether consumers are getting choices and are enjoying the benefits of innovation.

Sprint has followed an open Internet approach since it first launched its wireless web product in 2001. Indeed, next month, Sprint will be hosting its Ninth Annual Application Developer Conference.²⁸ At these conferences, Sprint meets with application developers and invites handset vendors, operating system vendors and platform enablers. The primary purpose of the meeting is to assist the application developers in bringing their ideas to market on Sprint’s networks.

Similarly, Sprint has an Open Device Initiative that certifies devices created by other companies to run on the Sprint network. Through our Open Device Initiative, hundreds of non-Sprint-branded devices run on the Sprint Now Network, including mobile computing and ma-

²⁶ CFA Comments at 12; CFA Reply Comments at 12.

²⁷ See CFA Comments at 12-13; CFA Reply Comments at 10-12.

²⁸ See

http://developer.sprint.com/site/global/news/conferences/p_2009devcon/p_2009devcon_present.jsp

chine-to-machine devices. Sprint has certified over 300 third-party devices through this program. Mobile computing devices from Dell, HP and Panasonic are among the devices recently certified to take advantage of the speed and dependability of the Now Network.

Sprint customers also enjoy full HTML browsing and can personalize web browsing with Sprint Web. Sprint's customers can choose to download name-brand apps and services from the Internet. And, Sprint is a member of the Open Handset Alliance, along with more than 30 other participating companies, supporting the free and open mobile applications platform named Android.

Sprint is dedicated to offering customers a variety of devices with multiple platforms that take advantage of its network so customers can do what they want, when they want and where they want. For example, Sprint has introduced a variety of different devices that run on different operating systems, including:

- The HTC HeroTM, which uses Google's open and innovative Android platform. Through the Android Market (application storefront), over 8,000 applications, widgets and games have already been developed for this platform and many more will be developed in the near future.²⁹
- Sprint also launched the Palm Pre device. This device is an exciting addition to Sprint's portfolio. Aside from its multitasking capabilities, the Palm Pre is the first Palm device to feature its webOSTM operating system. Palm has since published its "Mojo" software development kit ("SDK") to assist application developers in learning how to design applications for devices on the webOSTM platform. In order to facilitate application development, Palm used existing technologies (e.g., HTML 5 and JavaScript) to spare developers from learning a new programming language.³⁰ Sprint and Palm expect the number of applications available through Palm to increase exponentially in a relatively short timeframe.

²⁹ See Sprint Press Release, *The Innovation and Openness of a True Mobile Internet Experience Coming Soon to America's Most Dependable 3G Network from Sprint on HTC Hero with Google*, (September 3, 2009).

³⁰ See <http://en.wikipedia.org/wiki/WebOS>

- Sprint will begin to offer its customers additional device options by launching devices running Qualcomm's Brew Mobile Platform™ (Brew MP). Brew MP is a mobile operating system that can support feature phones and smartphones alike. Sprint's industry-leading open approach means Sprint is dedicated to offering customers a variety of devices with multiple platforms that take advantage of the Now Network so customers can do what they want, when they want with their Sprint phone.³¹

IV. THE NEXT REPORT SHOULD ANALYZE TWO UPSTREAM (OR INPUT) MARKETS THAT HAVE NEGATIVELY IMPACTED INVESTMENT, THE AVAILABILITY OF NEW SERVICES, AND COMPETITION

Congress has specified that the Commission "shall include" in its annual competition reports an "analysis" of the "competitive market conditions" regarding wireless services.³² The Federal Trade Commission ("FTC") recently advised the Commission that a competitive analysis of one product market (*e.g.*, wireless broadband) should include an analysis of the critical inputs needed to provide the product (*e.g.*, backhaul facilities):

These [input] segments can be critical to enable new end user providers to provide broadband service in a particular geographic area. Competition in these segments ultimately can affect competition in the last mile. . . . Thus, the nature of competition in middle-mile band backbone connections may affect the ability of a provider of last-mile wireless service to enter and compete.³³

Accordingly, it is entirely appropriate for the Commission to address the critical inputs wireless carriers need from third parties to provide their services (so-called "upstream markets") so the Commission can analyze how those inputs affect the market for wireless services.³⁴ The Commission also correctly identifies to two critical inputs wireless carriers need to provide their mobile services: backhaul facilities and cell sites.³⁵

³¹ See Sprint Press Release, *Sprint Plans to Expand Customer Options by Launching Qualcomm's Brew Mobile Platform*, (September 11, 2009).

³² See 47 U.S.C. § 332(c)(1)(C).

³³ FTC Comments, GN Docket No. 09-51, at 7 (Sept. 4, 2009).

³⁴ See *Mobile Wireless Competition NOI* at ¶ 26.

³⁵ See *id.*

Sprint addresses these two inputs below and demonstrates that the current situation pertaining to both backhaul facilities and cell sites is harming consumers by both suppressing the availability and increasing the cost of wireless services. In addressing these subjects, Sprint is not asking the Commission to take any corrective action in this docket (as these issues are being addressed in two pending dockets). Rather, Sprint is asking only that the Commission in its next competition report analyze how these critical inputs are today adversely affecting competition for wireless services.

A. THE NEXT REPORT SHOULD ANALYZE THE IMPACT INCUMBENT SPECIAL ACCESS PRICES ARE HAVING ON THE AVAILABILITY AND COST OF WIRELESS SERVICES

One of the most important issues facing Sprint (and other independent wireless carriers) is the price we must pay incumbent LECs for the special access facilities we need to connect our base stations with our mobile switching centers.³⁶ Sprint has addressed this subject in past competition report dockets,³⁷ so it will only briefly address the matter here.

The material facts are not in serious dispute:

1. Backhaul facilities constitute “bottleneck facilities.” in antitrust parlance. Wireless carriers cannot provide their services at all unless they can connect their cell sites with their network equipment such as switches and routers.
2. In most locations, wireless carriers have no competitive alternatives to the “special access” backhaul facilities that incumbent LECs provide, which gives the incumbents an effective monopoly in most areas. A report the National Regulatory Research Institute (“NRRI”) published earlier this year confirmed what the General Accountability Office (“GAO”) and two FCC economists had earlier found - namely, while wireless carriers may have competitive al-

³⁶ These backhaul facilities include a range of capacity levels, speeds and technologies, from TDM-based DS1 to packet-based Ethernet circuits.

³⁷ See, e.g., Sprint Nextel Comments, WT Docket No. 08-71 (May 7, 2007); Sprint Nextel Comments, WT Docket No. 08-27 (March 26, 2008); Sprint Nextel Comments, WT Docket No. 09-66 (June 15, 2009).

ternatives in “compact downtown areas,” they generally have no alternatives in suburban and rural areas where they must install most of their cell sites.³⁸

3. As the FCC has previously recognized, “all incumbent LECs have the incentive and ability to discriminate against unaffiliated broadband CMRS providers”:

LECs that own CMRS subsidiaries have the incentive to engage in anticompetitive practices in order to benefit their own CMRS subsidiaries and to protect their local exchange monopolies from wireless competition. At the same time, LEC control of bottleneck local exchange facilities – upon which competing CMRS providers must rely – gives LECs the opportunity to engage in anticompetitive behavior.³⁹

4. However, the three RBOCs (AT&T, Qwest and Verizon) dominate the special access market, as they account for over 90 percent of all interstate special access revenues.⁴⁰
5. Available record evidence shows that the three RBOCs are enjoying monopoly rents on (and obscene profits from) the special access facilities they provide to wireless carriers.
6. The price of backhaul facilities has a considerable impact on the price of wireless services. Special access expense constitutes approximately one-third of Sprint’s total cell site operating costs.

These high, monopolistic incumbent special access prices adversely affect the wireless services market.⁴¹ First of all, high prices increase the cost of all wireless services (including those provided by the incumbent’s wireless affiliate) and in the process, suppresses intramodal

³⁸ NRRI Report, *Competitive Issues in Special Access Market*, No. 09-02 (Jan. 21, 2007). See also GAO, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO 07-80 (Nov. 2006); Uri and Zimmerman, *Market Power and the Deregulation of Special Access Service by the FCC*, 13 Information and Telecommunications Law, No. 2, at 129 (2004).

³⁹ *LEC-CMRS Safeguards Order*, 12 FCC Rcd 15668, 15689 ¶ 27, 14696 ¶ 45 (1997), *aff’d GTE v. FCC*, 233 F.3d 341 (D.C. Cir. 2000). See also *Section 272(f)(10) Sunset Order*, 22 FCC Rcd 16440, 16473 ¶ 64 (2007)(ILECs “continue to possess exclusionary market power with [their] respective regions by reason of [their] control over these bottleneck access facilities.”); *Cingular/AT&T Wireless Merger Order*, 19 FCC Rcd 21552, 21611 ¶ 237 (2004)(ILECs have the “incentive to protect their wireline customer base from intermodal and intramodal competition.”).

⁴⁰ See 2007 FCC ARMIS Report 43-01, Table 1, Column “Special Access.”

⁴¹ The problem is not limited to incumbent LEC prices, but also the terms and conditions they impose. Such terms often inhibit or prevent carriers like Sprint from purchasing competitive facilities from competitive LECs (in those locations where competitive alternative are even available).

competition. Incumbent LECs, by overpricing production inputs needed by all wireless carriers, effectively establish a price floor for wireless services and thus help incumbents insulate their landline operations from more intense intermodal competition.

But high prices for special access harm, independent wireless carriers that are not affiliated with incumbent LECs. The incumbent's wireless affiliate books the cost of backhaul as an accounting entry, and it does not matter to AT&T shareholders, for example, whether AT&T the incumbent LEC or AT&T the mobile carrier records profits in its respective operations. In contrast, independent carriers like Sprint must pay cash for their backhaul facilities and the payment of monopoly prices for essential facilities means they have less cash available for investment – investment that could otherwise be used to compete against the incumbent's services and create jobs. What is more, the incumbent LEC can use the sizable profits generated from independent carriers to make investments (whether in its landline or wireless operations) that can then be used to compete against the services provided by independent carriers. In other words, by overpricing bottleneck facilities, the incumbent can force independent carriers to subsidize the operations of their competitors.

The market power incumbent LECs possess over their bottleneck facilities has its most pernicious effect on the deployment of broadband services – whether 3G or 4G. Broadband services require more or larger backhaul facilities because of the additional capacity required to provide such services. Incumbent LEC dominance of the special access market, particularly channel terminations, ensures that they will continue to control the cost imposed on new broadband providers, regardless of the size of the facility. Inflated costs of special access, in turn, will limit the number of areas in which competitive broadband deployment will be economically feasible and will artificially increase costs to consumers.

The key point is that the cost and availability of wireless service is determined not solely by free market forces, but is rather determined in part by incumbent LECs such as AT&T and Verizon. Congress adopted unbundled network elements (“UNEs”) precisely so incumbent LECs could not exercise market power over their competitors. While the former Commission determined that wireless carriers cannot take advantage of the UNE statute,⁴² the Commission still has tools that it can exercise to control the market power that incumbents are wielding over backhaul facilities.

B. THE NEXT REPORT SHOULD ANALYZE THE IMPACT LOCAL GOVERNMENT SITING PRACTICES ARE HAVING ON THE AVAILABILITY OF WIRELESS SERVICES

Having access to cell sites, when and where needed, is also an essential input to wireless services. While Congress determined that decisions concerning the placement, construction and modification of cell sites should be made by local zoning authorities, Congress also imposed certain limits on these local government decisions, including the requirement that localities act on siting requests “within a reasonable period of time after the request is duly filed.”⁴³

There is overwhelming evidence before the Commission that many local zoning boards are not acting on siting requests “within a reasonable time.”⁴⁴ For example, CTIA advised the FCC last year that at the time, approximately 350 requests to collocate on an existing tower were pending for over one year – and 135 of these requests pending for more than three years.⁴⁵

⁴² See *Triennial Review Remand Order*, 20 FCC Rcd 2533, 2551-58 ¶¶ 34-40 (2004).

⁴³ See 47 U.S.C. § 332(c)(7)(B)(iii).

⁴⁴ See Public Notice, *Wireless Telecommunications Bureau Seeks Comments on Petition for Declaratory Ruling by CTIA to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165, DA 08-1913 (Aug. 14, 2008).

⁴⁵ See CTIA Petition for Declaratory Ruling, WT Docket No. 08-165, at 15 (July 11, 2008).

Sprint cited one instance where its request had been subject to 41 zoning hearings and that the typical processing times in one state range between 28 and 36 months.⁴⁶

These kinds of delays negatively affect investment in and deployment of wireless broadband services. The Commission has recognized that the wireless industry may need approximately 16,000 new towers to support new broadband services, and that a disproportionate number of these sites will be located in rural areas.⁴⁷ Obviously, the Commission cannot discharge its statutory duty to accelerate the availability of broadband services if wireless carriers are unable to secure in a timely manner the approvals they need to deploy their cell sites.

In addition to failing to act on siting requests, some local zoning boards still maintain a practice of refusing to grant any applications if a competing carrier already serves the area.⁴⁸ Some zoning boards have adopted this “one provider is enough” policy even though Congress has been clear that localities “shall not unreasonably discriminate among providers of functionally equivalent services” and “shall not prohibit . . . the provision of personal wireless services.”⁴⁹

In summary, if the Commission has not acted on CTIA’s siting petition by the time of the next annual competition report, it should analyze in this report these siting delays and exclusionary policies that are inhibiting competition and harming consumers.

⁴⁶ See Sprint Comments, WT Docket No. 08-165, at 5 (Sept. 29, 2008).

⁴⁷ See *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, at ¶ 158 (May 22, 2009).

⁴⁸ See CTIA Petition for Declaratory Ruling, WT Docket No. 08-165, at 30-35 (July 11, 2008).

⁴⁹ See 47 U.S.C. § 332(c)(7)(B)(i).

V. THE COMMISSION MUST REFORM INTERCARRIER COMPENSATION AND UNIVERSAL SERVICE TO SPUR THE DEPLOYMENT OF IP-BASED BROADBAND NETWORKS

The Commission has sought comment on new technologies and future developments that are changing the nature of mobile wireless services.⁵⁰ It has also sought comment on “any barriers to entry or growth that exist in the mobile wireless market,” particularly relative to investment because, as the Commission correctly observed, “[i]nvestment is critical to the development of the mobile wireless market.”⁵¹

The wireless industry, like much of the landline industry, is undergoing revolutionary change. Specifically, the wireless industry is beginning to deploy and use IP-enabled broadband networks. This is evidenced by the new national 4G WiMAX network that Clearwire is building and operating – a network that will reach 30 million people by the end of this year and many more next year.

But the deployment of these advanced broadband wireless networks is not limited to urban areas. For example, the new entrant, DigitalBridge Communications, has an operational WiMAX network that provides broadband Internet access and IP-enabled voice services in 15 rural communities, such as Appomattox, Virginia; Jackson, Wyoming; and Rexburg, Idaho.⁵² Another new entrant, Open Range Communications, has secured a loan of \$267 million from the Rural Utilities Service (“RUS”), plus another \$100 million in private financing, to build a WiMAX broadband network to serve 546 rural communities spanning 17 states.⁵³ This kind of in-

⁵⁰ See *Mobile Wireless Competition NOI* at ¶ 31.

⁵¹ See *id.* at ¶ 28.

⁵² See www.digitalbridgecommunications.com. See also WASHINGTON POST, *Surfing Roads Less Traveled; Ashburn Firm Makes WiMax a Reality in Small-Town America* (June 30, 2009).

⁵³ See www.openrangecomm.com.

vestment ensures that residents of rural areas have access to the same capabilities as residents of metropolitan areas.

Congress has made clear that the Commission's job is to take steps to promote the deployment of these kinds of broadband networks:

- Section 157(a) of the Act specifies that it “shall be the policy of the United States to encourage the provision of new technologies and services to the public.”
- Section 230(b) of the Act provides that it “is the policy of the United States (1) to promote the continued development of the Internet . . . [and] (2) to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation.”
- Section 706 of the 1996 Act specifies that the FCC “shall encourage the deployment on a reasonable and timely basis, of advanced telecommunications capability to all Americans” and that the FCC “shall take immediate action to accelerate the deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”
- In Section 102 of the Broadband Data Improvement Act Congress found that “[c]ontinued progress in the deployment and adoption of broadband technology is vital to ensuring that our Nation remains competitive and continues to create business and job growth.”
- In Section 6001(k) of the American Recovery and Reinvestment Act of 2009, Congress directed the FCC to prepare a national broadband plan to “ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal.”

Given these Congressional findings and directives, it is both timely and important for the Commission to identify barriers to broadband deployment.

The most significant barriers to wireless broadband deployment, at least barriers over which the Commission has direct control, are the current regimes for intercarrier compensation and high-cost universal service. Everyone agrees that both regimes are broken, and the Commission has been considering reform for years. But in examining reform, the Commission has yet to consider the impact these regimes have on new IP-based broadband networks, including mobile broadband networks.

Today's intercarrier compensation regime and high cost program are both designed to support circuit-switched networks that are obsolete and are beginning to be replaced by IP broadband networks. These two regimes have perverse effects on broadband deployment and undermine the very policies Congress has directed the Commission to implement relative broadband networks. Consider:

- Cash that could be used for broadband deployment is instead, by Commission mandate, diverted to above-cost LEC access charges and high-cost subsidies to support inflexible, outdated and costly circuit-switched networks;
- Receipt of these high access charges and universal services subsidies encourage the recipients to maintain their antiquated networks rather than investing in more robust and cost efficient broadband technology; and
- Even worse, broadband network providers are not currently eligible to receive the same subsidies – meaning that those carriers that maintain old technology receive, *via* Commission design, a sizable competitive advantage in the retail market.

Moreover, the current arrangement results in a massive transfer of wealth from mobile wireless networks to fixed landline networks using old technology. CTIA states the following:

Currently, wireless consumers contribute about one-third into the Universal Service Fund, yet last year wireless providers only withdrew about 11% of the disbursed funds. That difference is highlighted when considering high-cost universal service subsidies. Since 1997, \$22 billion has been provided in high-cost support, with nearly \$21 billion of that going to incumbent local exchange carriers (ILECs) and a little more than \$1 billion to wireless carriers.⁵⁴

This wealth transfer is inequitable and discriminatory, and it cannot be reconciled with the Administration and Congress' national broadband strategies. With large swaths of the country without wireless service, this wealth transfer arrangement makes utterly no sense when available evidence demonstrates that mobile wireless broadband networks can be deployed cost effectively and for less than comparable wireline broadband networks. Further, wireless broadband can

⁵⁴ See http://www.ctia.org/advocacy/policy_topics/topic.cfm/TID/21

deployed quickly – in a matter of months (assuming no unusual local and/or regulatory delays).⁵⁵

To support the nations’ goal of promoting broadband access, wouldn’t it make more sense for landline carriers to subsidize wireless networks?

Sprint therefore urges the Commission to take two steps. First, it should seek comment on the appropriate intercarrier compensation and high-cost regimes that are appropriate for broadband networks generally, and mobile wireless broadband networks in particular. Second, it should examine whether broadband network providers should participate in the current intercarrier compensation and high-cost regimes.

VI. THE COMMISSION SHOULD REAFFIRM THAT IT WILL NOT INTERVENE IN THE OPERATION OF FREE MARKET FORCES WITHOUT A DEMONSTRATION OF A CLEAR MARKET FAILURE

The Commission correctly observes in the NOI that Congress, in the 1993 Budget Act, “established the promotion of competition as the fundamental goal for [wireless services] policy formation and regulation.”⁵⁶ It is important to emphasize, however, that Congress also made clear how this objective is to be achieved:

[T]he statutory plan is clear. Congress envisioned in economically vibrant and competitive market for CMRS services. It understood that such a market was still evolving Congress delineated its preference for allowing this emerging market to develop subject to only as much regulation for which the Commission and the states would demonstrate a clear cut need.⁵⁷

⁵⁵ See DigitalBridge Communications Comments, GN Docket No. 09-29, WT Docket No. 07-293, at 3 (March 25, 2009)(DigitalBridge asserts wireless broadband can be deployed in rural areas “within 6-9 months,” for “under \$50 per household passed,” with the capability of serving “20-50 times the number of household per network dollar spent versus comparable landline solutions”).

⁵⁶ *Mobile Wireless Competition NOI* at ¶ 1.

⁵⁷ *Connecticut Rate Regulation Petition Denial Order*, 10 FCC Rcd 7025, 7031 ¶ 10 (1995), *aff’d Department of Public Utility Control v. FCC*, 78 F.3d 842 (2d Cir. 1996).

In other words, “the public interest, as expressed through [the 1993 Act], is for there to be as little regulation as possible.”⁵⁸

Reliance on market forces rather than regulation, the Commission has recognized, “promotes competition by refocusing competitors’ efforts away from strategies in the regulatory arena and toward technological innovation, service quality, competitive prices, and responsiveness to consumer needs.”⁵⁹

Reliance on market forces will ensure that the most efficient service providers prevail. This will create incentives for firms to offer innovative and improved services at the lowest possible costs, and will also ensure that investment decisions are driven by consumer demands rather than regulations.⁶⁰

The Commission’s reliance on market forces to govern the development of the retail wireless market has been enormously successful. As demonstrated above, prices continue to fall, the industry is beginning to deploy (and in Sprint’s case, offer) fourth generation technology, and innovation is accelerating at a pace perhaps unparalleled in the history of American business. Clearly, it is the American consumer who has benefited by this largely “hands off” approach to the evolution of the wireless sector.

As discussed in Part V above, Congress has charged the Commission to promote investment and competition, particularly relative to broadband networks. Given the proven success of the Commission’s “hands off” approach to the development of the retail wireless market, the Commission should reject arguments to impose new regulations on wireless carriers. To provide the certainty industry needs for further investment, the Commission should reaffirm that it will

⁵⁸ *Connecticut Stay Request Denial Order*, 11 FCC Rcd 848, 854 ¶ 19 (1995).

⁵⁹ *CMRS Equal Access/Interconnection NPRM*, 9 FCC Rcd 5408, 5411 ¶ 2 (1994).

⁶⁰ *1993 Budget Act Implementation NPRM*, 9 FCC Rcd 2863, 2866 ¶ 12 (1994).

intervene with new regulation in the wireless market only upon a demonstration of “a clear cut need.”

VII. CONCLUSION

Evidence abounds that the retail or downstream market remains intensely competitive to the benefit of American consumers. Sprint cautions, however, that the Commission’s policies – in areas such as special access, intercarrier compensation, and USF – are hindering Sprint and other independent wireless carriers’ ability to compete on a level playing field. Sprint urges the Commission to carefully examine and reconsider these policies lest the wireless marketplace return to a duopoly with far less competition.

Respectfully submitted,

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September 30, 2009